

REMARKS

Reconsideration of the application, as amended, is respectfully requested.

The "preferred" limitation in claim 5 has been deleted and made the subject of new claim 21, in view of the Office's objection to this informality. No surrender of subject matter is intended.

Applicants acknowledge, with appreciation, indication of allowable subject matter in claims 12-13 and 19-20.

The application relates to edible compositions comprising a significant amount of carotenoids but without a significant change of color. Thus, the carotenoids can be present in substantial levels without undesirable changes of color in the foods containing them.

The Office points to Runge et al., U.S. Patent No. 6,261,598 for its disclosure of carotenoid formulations and its use in human and animal foods, cosmetics and pharmaceuticals. However, the Office points to no teaching, or even motivation, to minimize the carotenoid color of the product, even less of the presently recited yellowness factor or yellowness index. Indeed, Runge et al. emphasize that the formulations can be used for coloring food products. Neither does the Office show "sound basis for believing that the product ... are the same," which apparently shifted the burden to applicant in Re Spada, 15 USPQ2d 1655, 1658, (Fed Cir 1990).

Therefore, it is respectfully submitted that a *prima facie* case of anticipation has not been made and it is respectfully requested that the application be allowed.

Respectfully submitted,



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